

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ESTATE OF ROGER D. :
OWENSBY JR., et al., :
 :
Plaintiffs, :
vs. : Case No. 01-CV-769
 : (Judge S. A. Spiegel)
CITY OF CINCINNATI, :
et al., :
 :
Defendants. :

Videotaped deposition of VICTOR N.

SPELLEN, a defendant herein, called by the
plaintiffs for cross-examination, pursuant to the
Federal Rules of Civil Procedure, taken before me,
Wendy Davies Welsh, a Registered Diplomate Reporter
and Notary Public in and for the State of Ohio, at
the offices of Helmer, Martins & Morgan Co. LPA,
1900 Fourth & Walnut Centre, 105 East Fourth Street,
Cincinnati, Ohio, on Wednesday, October 15, 2003, at
10:12 a.m.

Owensby vs. City of Cincinnati, et al.
October 15, 2003

VICTOR N. SPELLER

<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 Paul B. Martins, Esq. Don Stiens, Esq. Helmer, Martins & Morgan Co. LPA Suite 1900, Fourth & Walnut Centre 105 East Fourth Street Cincinnati, Ohio 45202 Phone: (513) 421-2400</p> <p>7 Mark T. Tillar, Esq. 240 Clark Road Cincinnati, Ohio 45202</p> <p>9 On behalf of the Defendants City of Golf Manor, Stephen Tilley, Roby Heiland and Chris Campbell:</p> <p>11 Lynne Marie Longtin, Esq. Rendigs, Fry, Kiely & Dennis 900 Fourth & Vine Tower One West Fourth Street Cincinnati, Ohio 45202-3688 Phone: (513) 381-9200</p> <p>14 On behalf of Defendants City of Cincinnati, Darren Sellers, Jason Hodge:</p> <p>16 Geri Hernandez Geiler, Esq. Assistant City Solicitor and Julie F. Bissinger, Esq. Chief Counsel Department of Law Room 214, City Hall 801 Plum Street Cincinnati, Ohio 45202 Phone: (513) 352-3346</p>	<p>Page 4</p> <p>1 notes may then be transcribed out of the presence of</p> <p>2 the witness; and that proof of the official</p> <p>3 character and qualifications of the notary is</p> <p>4 expressly waived.</p> <p>5</p> <p>6</p> <p>7 I N D E X</p> <p>8 Examination by: Page</p> <p>9 Mr. Martins 5</p> <p>10</p> <p>11</p> <p>12</p> <p>13 E X H I B I T S</p> <p>14 Page</p> <p>15</p> <p>16 Deposition Exhibit 18 9</p> <p>17 Deposition Exhibit 19 14</p> <p>18 Deposition Exhibit 20 44</p> <p>19 Deposition Exhibit 21 44</p> <p>20 Deposition Exhibit 22 53</p> <p>21 Deposition Exhibit 23 53</p> <p>22 Deposition Exhibit 24 61</p> <p>23 Deposition Exhibit 25 65</p> <p>24 Deposition Exhibit 26 71</p> <p>25 Deposition Exhibit 27 76</p>
<p>Page 3</p> <p>1 APPEARANCES (Continued):</p> <p>2 On behalf of the Defendants Robert B. Jorg, Patrick Caton, Jason Hodge, Victor Spellen and Darren Sellers:</p> <p>4 Donald E. Hardin, Esq. Hardin, Lefton, Lazarus & Marks, LLC 915 Cincinnati Club Building 30 West Garfield Place Cincinnati, Ohio 45202 Phone: (513) 721-7300</p> <p>7 Also present:</p> <p>8 Richard W. Grubb, Videographer</p> <p>9 Lisa Damstrom, Law Clerk Helmer, Martins & Morgan Co., L.P.A.</p> <p>11 Wendy M. Weller, Paralegal Buckley King</p> <p>12 Shawn Owensby</p> <p>13 Patrick Edmund Caton</p> <p>14</p> <p>15</p> <p>16</p> <p>17 S T I P U L A T I O N S</p> <p>18 It is stipulated by and among counsel for the</p> <p>19 respective parties that the deposition of VICTOR N.</p> <p>20 SPELLEN, a defendant herein, called by the</p> <p>21 plaintiffs for cross-examination, pursuant to the</p> <p>22 Federal Rules of Civil Procedure, may be taken at</p> <p>23 this time by the notary; that said deposition may be</p> <p>24 reduced to writing in stenotype by the notary, whose</p>	<p>Page 5</p> <p>1 VIDEOGRAPHER: The date is October the</p> <p>2 15th. The year is 2003.</p> <p>3 Would you please swear the witness, ma'am.</p> <p>4 VICTOR N. SPELLEN</p> <p>5 being by me first duly cautioned and sworn, deposes</p> <p>6 and says as follows:</p> <p>7 VIDEOGRAPHER: We're on the record, Mr.</p> <p>8 Martins. Videotape number 1, sir.</p> <p>9 CROSS-EXAMINATION</p> <p>10 BY MR. MARTINS:</p> <p>11 Q. Good morning, sir. Would you state for</p> <p>12 the record your full name, please.</p> <p>13 A. Victor Spellen.</p> <p>14 Q. And your age?</p> <p>15 A. 35.</p> <p>16 Q. Date of birth?</p> <p>17 A. 4/23/68.</p> <p>18 Q. Have you ever had your deposition taken</p> <p>19 before?</p> <p>20 A. No, sir.</p> <p>21 Q. Let me cover some ground rules for you.</p> <p>22 You've been placed under oath. I will be asking you</p> <p>23 questions. If you do not understand or did not hear</p> <p>24 a question, feel free to ask for clarification or</p>

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1 Q. Yes.
2 A. No, sir.
3 Q. Are you represented by anyone other than
4 Mr. Hardin?
5 A. Mr. Lazarus.
6 Q. Okay. Mr. Hardin's partner?
7 A. Correct.
8 Q. Did you have any other meetings with Mr.
9 Hardin other than the one that you've described
10 sometime in the past two weeks?
11 A. Over the phone.
12 Q. Okay. Any other meetings or discussions?
13 A. Today.
14 Q. All right. Other than the statements that
15 you have given, that -- that you've identified, have
16 you ever written out what you saw and heard on the
17 evening of November 7, 2000?
18 A. No, sir.
19 (Deposition Exhibit 19
was marked for identi-
20 fication.)
21 Q. Let me show you, sir, what is marked as
22 Exhibit 19. The way we'll do this, sir, is if I
23 hand you an exhibit, take a moment, look through it.
24 Once you feel comfortable with it, then look up at

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1 me and I'll start questioning you.
2 Exhibit 19 is a collection of some
3 documents from your personnel file; is that right?
4 A. Correct.
5 Q. The first is a picture of you and the
6 numbers -- or letters and numbers P862. That is
7 your badge number?
8 A. Correct.
9 Q. You'll note, sir, that on the pages are
10 what we call Bates numbers, the first page having
11 C001700 on it, and then the other pages are
12 sequentially numbered. I may refer to these at
13 times to get both of us to the same page. Okay?
14 I want to direct your attention to the
15 form called Personal History Statement. It has a
16 Bates number of C001702. It should be on the back.
17 Do you have that?
18 A. On the back?
19 MR. HARDIN: Yeah.
20 Wait a minute. There's no 2.
21 MR. MARTINS: Is it missing?
22 MR. HARDIN: Yeah. Here it is.
23 MR. MARTINS: Let's --
24 MR. HARDIN: No, we -- he's only got --

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1 MR. MARTINS: When they copied it --
2 Are you missing it?
3 MR. HARDIN: We have a 1 and a 3.
4 MR. MARTINS: You're missing it?
5 MR. HARDIN: No, we don't have it.
6 MS. BISSINGER: Actually, there's a couple
7 pages missing here.
8 MR. MARTINS: Right. Okay.
9 Can you run this again. They copied
10 them --
11 MR. HARDIN: These may be two-sided
12 documents.
13 MR. MARTINS: They're two-sided, and
14 whoever copied --
15 Can we run them -- run them again.
16 We'll do a substitution.
17 BY MR. MARTINS:
18 Q. Let me ask you, sir, while we're waiting
19 on the copies, you are presently a police officer
20 assigned to District 4?
21 A. No, sir.
22 Q. What are you -- what's your job?
23 A. I'm unemployed right now.
24 Q. I see. Were you employed at District 4?

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1 A. Correct.
2 Q. How long were you employed at District 4?
3 A. Almost four years.
4 Q. Until when?
5 A. I'm not sure of the exact date.
6 Q. Do you know the month?
7 A. February, I believe.
8 Q. February of what year?
9 A. '03.
10 Q. This year?
11 A. '0-- '0-- yes. Yes. That's right.
12 Q. Could you explain the circumstances of why
13 you left in February of '03?
14 A. I was dismissed by the police division.
15 Q. Since the dismissal in February of '03,
16 have you held any jobs?
17 A. No, sir.
18 Q. Was the dismissal in connection with the
19 events of November 7, 2000?
20 MR. HARDIN: There's going to be an
21 objection, and I hope it's continuing,
22 regarding the dismissal or any subsequent
23 disciplinary.
24 Q. To your knowledge, was the dismissal in

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<p style="text-align: right;">Page 18</p> <p>1 connection with the events of November 7, 2000?</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever heard of a head wrap</p> <p>4 technique as far as a law enforcement technique?</p> <p>5 A. Not that I can remember, no.</p> <p>6 Q. Have you ever heard of a neckhold</p> <p>7 technique?</p> <p>8 A. No.</p> <p>9 Q. When you were -- let's see, you -- did you</p> <p>10 graduate from the police academy in '99?</p> <p>11 A. Correct.</p> <p>12 Q. When you were at the police academy, was</p> <p>13 the use of a head hold or a neckhold ever taught?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. And in the time that you were a police</p> <p>16 officer with maybe seminars or updates, whatever</p> <p>17 training classes that you would attend in the normal</p> <p>18 course of your business, did anyone ever teach you</p> <p>19 about a head wrap technique or a neckhold technique?</p> <p>20 A. None that I can remember.</p> <p>21 Q. Have you ever seen a Cincinnati police</p> <p>22 officer use a head wrap technique or a neckhold</p> <p>23 technique?</p> <p>24 A. I have not, sir.</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Never seen it?</p> <p>2 A. No.</p> <p>3 Q. And never seen any other police officer</p> <p>4 employ such a either head wrap or neckhold</p> <p>5 technique?</p> <p>6 A. Not that I could remember.</p> <p>7 MR. MARTINS: Thanks.</p> <p>8 BY MR. HARDIN:</p> <p>9 Q. If we could, sir, here's another, a new</p> <p>10 and better, improved version of Exhibit 19, and</p> <p>11 we'll just get rid of that one (indicating).</p> <p>12 MR. MARTINS: And one for Mr. Hardin, for</p> <p>13 other counsel.</p> <p>14 Thank you.</p> <p>15 MS. BISSINGER: Yes.</p> <p>16 Q. Now, referring you to the page marked</p> <p>17 C001702 in Exhibit 19, Personal History Statement,</p> <p>18 is this your handwriting?</p> <p>19 A. Correct.</p> <p>20 Q. You graduated from high school in 1987 and</p> <p>21 attended -- I -- I can't make out the name of the</p> <p>22 college where you --</p> <p>23 A. Baruch.</p> <p>24 Q. Baruch, New York City?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. I understand that you, for a period of</p> <p>2 about four months, rode with Officer Jorg. Is that</p> <p>3 right?</p> <p>4 A. Correct.</p> <p>5 Q. He was your FTO?</p> <p>6 A. Correct.</p> <p>7 Q. And that's field training officer?</p> <p>8 A. Yes, sir.</p> <p>9 (Discussion off the stenographic record.)</p> <p>10 Q. What's your understanding of the field</p> <p>11 training officer program? How's that supposed to</p> <p>12 work?</p> <p>13 A. Basically on a supervisory type position</p> <p>14 they're -- they're supposed to guide you in certain</p> <p>15 things and teach you hands-on street type of work</p> <p>16 and -- and rate your performance weekly.</p> <p>17 Q. In the time that -- and -- and in this</p> <p>18 four-month period I take it on a maybe almost daily</p> <p>19 basis you were working with Officer Jorg?</p> <p>20 A. Correct.</p> <p>21 Q. In that time did you ever observe Officer</p> <p>22 Jorg employ a head wrap technique or a neckhold</p> <p>23 technique on a suspect?</p> <p>24 A. I've never observed that, sir.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Correct.</p> <p>2 Q. Okay. Other schooling or specialized</p> <p>3 courses, EMT-D course at Queens City College?</p> <p>4 A. Correct.</p> <p>5 Q. New York City?</p> <p>6 A. Yes, sir.</p> <p>7 Q. What is an EM-- I -- well, what is an</p> <p>8 EMT-D course?</p> <p>9 A. It's advance training for EMTs.</p> <p>10 Q. And is that your signature at the bottom</p> <p>11 of the page?</p> <p>12 A. Yes, sir.</p> <p>13 Q. On the next page, 1703, is a Personal</p> <p>14 History Statement, Employment Record, and am I</p> <p>15 correct in understanding that you were an EMT for</p> <p>16 Transcare New York?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What is Transcare New York?</p> <p>19 A. It's a -- a private run ambulance, medical</p> <p>20 facility.</p> <p>21 Q. Going to the page 1705, entitled Service</p> <p>22 in U.S. Armed Forces, I see that you served in</p> <p>23 the -- in the artiller-- Army artillery. Is that</p> <p>24 right?</p>

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13:02:18 1 THE WITNESS: Thank you, sir.

13:02:20 2 VIDEOGRAPHER: Sir, you have a right to
13:02:22 3 review this tape prior to its being shown to a
13:02:24 4 court.

13:02:24 5 MS. GEILER: I don't have any questions.

13:02:24 6 VIDEOGRAPHER: Will you waive that right?

13:02:26 7 MR. MARTINS: No.

13:02:27 8 THE WITNESS: No.

13:02:28 9 VIDEOGRAPHER: Thank you.

13:02:29 10 We're off the record. Time is 1:06.

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VICTOR N. SPELLEN

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(Deposition concluded.)

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